

## **BOARD OF ZONING ADJUSTMENT MINUTES**

**April 26, 2011**

Regular meeting of the Clay County Board of Zoning Adjustment, Commission Hearing Room, 3<sup>rd</sup> Floor, County Administration Building, One Courthouse Square, Liberty, Missouri.

Call to Order

@ 5:30 pm: David Fulton, Chairman

Roll Call: Matthew Tapp, Director

Members Present: David Fulton, David Fricke, Mike Johnson, and Vernon Reed

Members Absent: Brian Klopfenstein

Staff Present: Matthew Tapp, Director  
Debbie Viviano, Planner  
Greg Canuteson, Assistant County Counselor  
Judi Ewing, Secretary

**Mr. Fulton:** Let us call the regular April 26, 2011, Clay County Board of Zoning Adjustment meeting to order. Matt, would you please call roll?

**Mr. Tapp:** Mike Johnson?

**Mr. Johnson:** Here

**Mr. Tapp:** Brian Klopfenstein?

**Mr. Klopfenstein:** No answer.

**Mr. Tapp:** David Fricke?

**Mr. Fricke:** Here.

**Mr. Tapp:** David Fulton?

**Mr. Fulton:** Here.

**Mr. Tapp:** Vernon Reed?

**Mr. Reed:** Here.

**Mr. Fulton:** The minutes you received are the last minutes of the meeting from May 18, 2010. Are there any additions or corrections to the minutes? If not, I entertain a motion to approve the minutes.

**Mr. Fricke:** Motion to approve the Board of Zoning minutes of May 18, 2010.

**Mr. Reed:** Seconded.

**Mr. Fulton:** Any discussion? No discussion. Motion and a second have been made. All those in favor signify by saying "aye".

**All:** aye.

**Mr. Fulton:** The minutes of May 18, 2010, have been approved.

**Final Vote**

**3/0/1 Approved**

**May 18, 2010  
BZA Minutes**

**Mr. Fulton:** This evening we have one case but before we go into that case we need to have the audience to be sworn in. All the actions will be on the record tonight. Raise your right hand, do you solemnly swear to tell the whole truth and nothing but the truth so help me God? Answer, I do.

**Audience:** "I do"

**Mr. Fulton:** Thank you. When we get to you, we will ask you to stand and come forward to the podium and again it is being recorded. Please speak into the microphone and give your name. We will first hear the staff's review of the staff report, and then we will listen to the proponents. Seeing that you are the only ones here, I don't think we will have any opponents. If anyone would come in, we would hear from the opponents, and then we will adjourn the public hearing. After that, the board will discuss and make a decision and hold the right to call you up again if we have any additional questions to be answered. We are glad to have counsel with us this evening. Always a pleasure to have Greg with us and Debbie too. Matt, would you like to present the staff report?

**Mr. Tapp:** Summarized the staff report. Staff report 11-101BZA dated April 18, 2011 and part of the case file is hereby made as an attachment to the minutes.

**Mr. Fricke:** Are there any questions to staff on anything that we have received?

**Mr. Fulton:** I have one. Matt, on this current page here; I am curious about the scale of the proposed building. It looks to be smaller than 40x60 feet.

**Mr. Tapp:** It is not to scale. This map is not to scale. We needed the updated aerial photography and the only way to get that was from the Accessor, so we got a screenshot. We estimated the approximate location and size of the structure.

**Mr. Fulton:** Okay. It looked a little small. Very good.

**Mr. Tapp:** It is to just give you an approximate idea as to where it is at.

**Mr. Fricke:** Mr. Chairman, I would like to propose that I make the staff report as part of the minutes.

**Mr. Fulton:** I move that the staff report be part of the minutes.

**Mr. Johnson:** Seconded.

**Mr. Fulton:** It is approved that the staff report is part of the minutes. Now we will hear from the proponents if there are no other questions from staff. Let's hear why we should approve this request for several variances. Who would like to speak in favor?

**John Kasserman:** I am sure you have driven to the property and seen that there is some what of a topography problem there. It always amazed me that with all the property that the Clevenger's owned that somebody would have picked that particular site. I guess more amazing to you is that we did afterwards. But none the less that is what it is. I am sure you have read the letter, and I can read that again or go directly to the uniqueness as to why we are requesting the variances on the particular building that is existing. I stated in the letter there that I realize the ignorance of the law is no excuse, but at the time the building was done we were doing concrete work and so forth and there was a particular area there that was washing down hill. The only way we could stop that was with a concrete or rock wall so we decided at the time to keep and access to allow us to go back to the backside of the house. Access is somewhat limited. You would think with five acres a guy would have a lot of access, but there is very little there. We decided that we didn't want to disturb the trees that were next to it because we thought about a garage. We were trying to keep access in a couple of directions. Knowing that at some point in time I might be wandering around in a walker, and I wanted to make sure I could get

around the property in some shape or form. I did not do anything except find out what the setbacks were, and I assumed that the house was legal so I made sure I kept that building in line with the front of it. Obviously, that was not right. There is nothing contrary to the public interest and it is not affecting any rights of the adjacent property owners. As I stated in there that we are converting the basement into bedroom, bath and kitchen to allow for her parents to move up from Salina so we can take care of them. We built a 14x24 building to store lawnmowers, patio furniture, winter stuff. Once again there is nothing there that affects the public safety or general welfare or anything to do with the Comprehensive Plan. It was a legitimately built building and complies with the building codes. The existing little building that was back there that was a donkey barn; we actually tore that building down last weekend. The sides were taken off a year or so ago and after we pulled the roof off, the building fell over and it seems that whoever built it initially.....the deepest post was six inches in the ground and it sits on a solid rock shelf which is the solid rock shelf that runs clear across the property. We are just requesting that the 15 feet be allowed to keep everything in line and so forth. We determined that we needed a building of some sort. We have a lot of stuff. If you drove by, you saw it. The stuff needs to be housed and a small workshop and basically storage. The fact that I own a building in Kansas City that is 60x150 feet and that building is full. I have to eliminate a lot of stuff to convert that property to rental property. I realize we could build about anything we wanted to. As I stated, approximately 20 percent of this ground has limited use and the rest of it is dense woods and ravines. The building is about 2,100 sq. feet. It is not a rectangle because it has a notch in there on the east side in the front. The main reason for that is to keep a 12 foot path that runs down along the tree line in front of that building that allows you to get to the back of the property. The way the hill lies, if I notch the building then everything grade wise tapers out and works out fine. If I made the building the full 40 feet at the top, then I would have to build a wall of some sort that squared off that property which I elected to do more grade work. If we are in the 50 feet restriction from the front and the 25 feet from the side to allow access from the front, you end up with an approximately 25x30 foot building. You would need a go-cart to drive down to it in order to utilize it. It would be fine for storage but that would be the end of it. The permit is not contrary to public interest and not affecting the rights of the adjacent property owners. I did not discuss anything with the property owners off the back side because you can't even see their property from there nor can they see ours. The O'dells own 200 acres across the street from us. I could not seem to get an audience there. The three neighbors adjoining us on the side property lines, the Meehan's, said that they did not care as long it is built on my property and not his. He said he did care if it sat on the property line. It did not make any difference to him. They understand the situation. They built their house in a valley which was the only flat ground they could find. They have a heck of a tour to get to their house. After discussing the issue with Matt, and he gave me the setback requirements we were discouraged. I do have semi-trailers, and we found that we could park whatever we wanted up there, and we decided that would be the only way to accomplish the storage situation whether it would be legal or not. It wasn't really going to do anything so far as the overall plan. We elected to move forward with the variance in hopes that you guys would look at our property and see our issues and understand where we were coming from. I guess I am open to any questions that you may have.

**Mr. Reed:** I am interested in the traffic along that McKee Road. I see to the south there is city property. Is that a city lagoon there?

**John Kasserman:** Yes it is. A matter of fact if it had not been.....for years that was a gravel road and if you noticed all the pine trees in the front of our property. That road was so bad that the lady that owned the property prior to us ended up planting those trees in there to cut the dust down. Until such time, the city actually put that treatment plant in there, the road wasn't paved and there was no water out there.

**Mr. Reed:** Do you have water now?

**John Kasserman:** Yes, we are connected to City water.

**Mr. Reed:** This is to the north of you is Highway H that leads from Excelsior Springs down towards Liberty Hills Country Club. Which carries probably quite a little bit of traffic but McKee Road does not appear to be involved in any kind of circular traffic pattern.

**John Kasserman:** No, most of the traffic there is generated by the City of Excelsior Springs. You will have a half of a dozen trucks going back and forth through there three or four times a day; UPS and FedEx. The only other truck that probably goes by there more than anyone is M&M Plumbing, and they dump sewage in the plant about three or four times a day.

**Mr. Reed:** The point in discussing this about the traffic is just to assure my self that the road is not targeted for major thorough fare.

**John Kasserman:** Not to my knowledge. The only way that road would ever have anymore traffic is if somebody were to buy the O'dell property at some point and try to develop that. That would be the only traffic.

**Mr. Reed:** That is just across the road. That is well served by Highway H.

**John Kasserman:** It is served by H and McKee. I honestly don't anticipate that there would be anything that happens in the next 25-30 years that would be an impact as far as traffic was concerned.

**Mr. Reed:** I am convinced of that you are not creating any serious problems.

**Mr. Fricke:** I have a question for staff. I assume that the building does not encroach on any road right-of-ways?

**Mr. Tapp:** No it is not. It still sits back off the front and side property line.

**Mr. Fulton:** Is the front property line indicated here with the dotted line?

**Mr. Tapp:** Yes. It looks like a blue and black dashed line and that is the property line. I believe Mr. Kasserman said it was about 8 or 7 feet from.....

**John Kasserman:** It depends. We have had a discrepancy over the property line since I last talked to. (Passed out a photo) This gives you a better shot of the property line. The Meehan's had their property surveyed, and he showed by the corner stake that we talked about and that is the corner of the property. So their fence line is the property line and since my property line is the same deal. There is a foot or two discrepancy that we could argue anyway you want to. I need to be as close to that front property line as I can to stay off the hill without building much more of a mountain there than I am. I still want to be able to use some of that property down below. I guess to mow.

**Mr. Fulton:** Early on you referred to some 15 feet; I did not follow that.

**John Kasserman:** The 15 foot pertains to the existing building, the existing shed. To be 50 feet or under assumption where the property line is.....to be 50 feet it is now 35 feet.

**Mr. Tapp:** That is the encroachment on the front setback line.

**Mr. Kasserman:** It obviously has no setback problems.

**Mr. Fulton:** So to get this building constructed and level will there be fill dirt?

**John Kasserman:** Yes, we are bringing in more dirt. We are a little high in the driveway. I had already cut that hill down a couple of years ago when we were doing work. We were trying to get a flat spot to be able to park something over there. What we dug out from behind where we poured concrete patios and stuff; we brought that dirt in. We had a pretty level.....actually the back which would be to the north, and we are within about 3 feet from the grade and 50 feet for a 40 foot building. It does change a little bit. There will be fill and a matter of fact we were going to fill this ground whether we got the building or not so we could gravel it. It would have been done had it not been for the weather.

**Mr. Fulton:** Are you going to build a retaining wall?

**John Kasserman:** No, I will not have to do a retaining wall. If I would have built the building the full 40x60, I would have to do a retaining wall.

**Mr. Fulton:** So that is why you had to cut the size down?

**John Kasserman:** Yes.

**Mr. Fricke:** Matt, did you receive any calls regarding this variance?

**Mr. Tapp:** No phone calls.

**Mr. Fulton:** Okay, the public meeting is closed, and I will call for the opponents. There is no opposition for this case here tonight. With that the public hearing is closed since there is no one here in opposition for this request for three variances. The Chair entertains a motion so we can have discussion.

**Mr. Fricke:** To develop history on this, it appears that the four criteria have been met, unique conditions, not contrary to public interest, and will constitute hardship it appears and it will not affect public health; I will make a motion that we approve 1) 35 foot setback variance, 2) 18 feet side setback variance, 3) a 42 foot front setback variance and that a building permit be issued plus the fine for the existing storage building as outlined as the recommendation from the staff.

**Mr. Fulton:** Does the motion need to include point four?

**Mr. Tapp:** Not necessarily.

**Mr. Fulton:** There are only 3 variances.

**Mr. Tapp:** Correct.

**Mr. Fulton:** Okay, the motion is on the floor to approve the 3 variances spelled out in the staff report. Is there a second?

**Mr. Johnson:** Seconded.

**Mr. Fulton:** Motion and a second. Is there any other discussion?

**Mr. Fricke:** I feel that it is important the Mr. Kasserman understands that no type of business can be conducted from the structure that you plan to build.

**Mr. Reed:** Except agricultural.

**Mr. Tapp:** Certain home occupations. Except for agricultural and certain home occupation uses.

**Mr. Fricke:** No retail and no furniture selling or anything like that.

**Mr. Kasserman:** No. I will use it as shop to restore old furniture.

**Mr. Reed:** You are not expecting customers?

**Mr. Kasserman:** No, I am not. I am expecting UPS. I will do some mirror work, but that mirror work is 99% comes by mail. I will not need any kind of occupation license.

**Mr. Fulton:** So this building is essential for you to continue your business and to store the things that you are giving up the storage building for?

**Mr. Kasserman:** You say whether or not to continue our business.....

**Mr. Fulton:** You made the point that you had a storage building in the city, and that you were going to use this one for that.

**Mr. Kasserman:** Yes, we function out of that building. That building in town has been in my family since 1963 so we have a lot of property there and so forth. We use it so seldom and it takes an hour to make the trip back and forth. I am trying to get rid of a lot of stuff, and I am not in a big hurry to get that building emptied. I want to dispose of a lot of things that are in there, and I have some potential renters to utilize that building. We have several pieces that are high-end stuff. I have a lot of pre-civil war furniture and so forth that needs to be restored. At some point, it needs to be utilized or sold. That is part of the plan. I also have cars; 1969 Mustang, Mach I, 58 MGA, and a 78 Jaguar and those cars need to be inside. The MG and Mustang are both cars that need to be worked on. Those are for me and they are my toys.

**Mr. Fulton:** I was just trying to establish the basis of the hardship. I know that “hardship” is a gray area. I was trying to establish that there was hardship if you did not have this because of your need for the building.

**Mr. Kasserman:** As I tried to explained, I take care of an elderly gentleman and my wives parents who are 85 years old will be moving in. They will require more and more from me to drive to town. With the expense of fuel and for me to drive back and forth and be allowed any time to do any work.....if something happens then I am 30-40 minutes away from them. I need to be close to home.

**Mr. Fulton:** Okay, thank you. Very good staff report, as usual. Roll call, please.

**Mr. Tapp:** Mike Johnson?

**Mr. Johnson:** Yes.

**Mr. Tapp:** David Fricke?

**Mr. Fricke:** Yes.

**Mr. Tapp:** David Fulton?

**Mr. Fulton:** Yes.

**Mr. Tapp:** Vernon Reed?

**Mr. Reed:** Yes.

<b>Final Vote</b>	<b>4/0/0</b>	<b>Approved</b>	<b>11-101 BZA Set back variances for John Kasserman 12223 McKee Road</b>
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**Mr. Fulton:** Very good; your requests for the variances have been unanimously approved. Thank you for coming in and having a very complete, comprehensive presentation. It helps a lot. Thank you. Is there any other business?

**Mr. Tapp:** No and there will not be a May meeting.

**Mr. Fulton:** Motion to adjourn?

**Mr. Fricke:** Motion

**Mr. Johnson:** Seconded.

**Mr. Fulton:** All in favor say “aye”.

**All:** aye.

**Meeting Adjourned**

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*Chairman, Board of Zoning Adjustment*

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*Secretary, Board of Zoning Adjustment*

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*Recording Secretary*